



CITY OF KETTERING

DONALD E. PATTERSON, MAYOR • TONY KLEPACZ, VICE MAYOR
BRUCE E. DUKE • JACQUE FISHER • BILL LAUTAR • ROBERT SCOTT • JOSEPH D. WANAMAKER

KETTERING COUNCIL AGENDA

August 25, 2020

Kettering Government Center- South Building
3600 Shroyer Road Kettering, Ohio 45429

****NOTE: DUE TO THE COVID-19 PANDEMIC, CITIZENS WISHING TO SPEAK TO CITY COUNCIL ARE ENCOURAGED TO REGISTER TO SPEAK PRIOR TO THE START OF THE COUNCIL MEETING TO ENSURE SAFE SOCIAL DISTANCING RULES AND PRACTICES ARE FOLLOWED. CITIZENS WISHING TO SPEAK SHOULD CONTACT THE CLERK OF COUNCIL'S OFFICE BY PHONE AT (937) 296-2416 DURING NORMAL BUSINESS HOURS OR SEND AN EMAIL TO KETTERINGMAYORCOUNCIL@KETTERINGOH.ORG TO REGISTER TO SPEAK. REGISTRATION SHEETS WILL ALSO BE AVAILABLE AT THE ENTRANCE OF THE GOVERNMENT CENTER PRIOR TO THE START OF THE CITY COUNCIL MEETING.**

6:00 P.M. **WORKSHOP** Deeds Room
7:30 P.M. **REGULAR MEETING** Council Chambers

PLEDGE OF ALLEGIANCE

INVOCATION

APPROVAL OF MINUTES

August 11, 2020- Council Meeting & Workshop Minutes

PROCLAMATIONS, SPECIAL PRESENTATIONS, AWARDS, SPECIAL RESOLUTIONS, APPOINTMENTS TO BOARDS AND COMMISSION

Presentation Kettering Backpack Program

PUBLIC HEARINGS

PUBLIC COMMENT ON LEGISLATION

(5 Minute Limit per Speaker)

ORDINANCES IN SECOND READING

RESOLUTIONS

1. Authorizing the City Manager to apply, on behalf of the Kettering Municipal Court, for a body armor grant from the Ohio Attorney General.
2. Reappointing Donald E. Patterson, Tony Klepacz, and Bruce E. Duke as trustees of the Kettering Development Corporation.
3. Declaring as surplus and approving a contract to sell 28.541 acres of city-owned property in Research Park.

4. Authorizing the City Manager to contract with the Montgomery County Land Reutilization Corporation for participation in the demolition program.
5. Authorizing the City Manager to contract with the Montgomery County Land Reutilization Corporation to provide administrative support services for the demolition program.

ORDINANCES IN FIRST READING

6. To rezone and to reclassify the development pattern districts for 3233 and 3383 Woodman Drive (Planning Commission Case No. PC-20-010).

CERTIFICATIONS AND PETITIONS

MANAGER'S REPORT/COMMUNITY UPDATE

OTHER BUSINESS NOT ON WRITTEN AGENDA

Audience Participation (5 Minute Limit per Speaker)

CITY COUNCIL REPORT/UPDATE

The City of Kettering wishes to make certain that all citizens have the opportunity to actively participate in their local government. If you have a disability and require accommodations to participate in a Council meeting, please contact the Clerk of Council at 296-2416 so that reasonable modifications can be made.

KETTERING CITY CALENDAR
2020

August 25	6:00 p.m. 7:30 p.m.	Council Workshop City Council Meeting
September 7	All Day	Government Center Closed- Labor Day
September 8	4:00 p.m. 6:00 p.m. 7:30 p.m.	Partners for Healthy Youth Council Workshop City Council Meeting
September 14	7:00 p.m.	Board of Zoning Appeals
September 21	7:00 p.m. 7:00 p.m.	Planning Commission Board of Community Relations
September 22	6:00 p.m. 7:30 p.m.	Council Workshop City Council Meeting

CITY OF KETTERING, OHIO

A RESOLUTION

By:

No.

**AUTHORIZING THE CITY MANAGER TO APPLY, ON BEHALF
OF THE KETTERING MUNICIPAL COURT, FOR A BODY
ARMOR GRANT FROM THE OHIO ATTORNEY GENERAL**

WHEREAS, the Kettering Municipal Court wishes to apply for a body armor grant from the Ohio Attorney General, funded by the Ohio Bureau of Workers' Compensation, to enhance the safety and prevent injury of law enforcement officers; and

WHEREAS, the grant will fund 75% of the cost of the body armor; a City match of 25% will be required; and

WHEREAS, if awarded, the grant funds will be used to purchase body armor to enable the probation officers at the Kettering Municipal Court to safely perform field work;

NOW, THEREFORE, Be It Resolved by the Council of the City of Kettering, State of Ohio, that:

Section 1. The City Manager is authorized to take all necessary and proper action to apply, on behalf of the Kettering Municipal Court, for the above-described grant from the Ohio Attorney General.

Section 2. As provided in Section 4-8 of the City Charter, this Resolution takes effect immediately upon its adoption.

Passed by Council this _____ day of _____ 2020.

DONALD E. PATTERSON, Mayor

ATTEST:

CERTIFICATE OF APPROVAL

LASHAUNAH D. KACZYNSKI,
Clerk of Council

THEODORE A. HAMER III,
Law Director

Estimated Cost: \$3,000.00
Amount Budgeted: \$0
Acct. No.: Special Grants & Programs

(Requested by: Judge J. Long and Judge F. Dressel)

CITY OF KETTERING, OHIO

A RESOLUTION

By:

No.

**REAPPOINTING DONALD E. PATTERSON, TONY KLEPACZ,
AND BRUCE E. DUKE AS TRUSTEES OF THE KETTERING
DEVELOPMENT CORPORATION**

WHEREAS, this Council desires to reappoint Donald E. Patterson, Tony Klepacz, and Bruce E. Duke to new terms of office as Trustees of Kettering Development Corporation;

NOW, THEREFORE, Be It Resolved by the Council of the City of Kettering, State of Ohio, that:

Section 1. This Council hereby reappoints Donald E. Patterson, Tony Klepacz, and Bruce E. Duke as Trustees of the Kettering Development Corporation, for terms of office effective as of January 1, 2020 and ending December 31, 2021, to represent the City and its interests in that capacity and affirms that any prior appointments of such trustees were made for the same purpose.

Section 2. As provided in Section 4-8 of the City Charter, this Resolution takes effect immediately upon its adoption.

Passed by Council this _____ day of _____ 2020.

DONALD E. PATTERSON, Mayor

ATTEST:

CERTIFICATE OF APPROVAL

LASHAUNAH D. KACZYNSKI,
Clerk of Council

THEODORE A. HAMER III,
Law Director

(Requested by: City Manager's Office)

CITY OF KETTERING, OHIO

A RESOLUTION

By:

No.

**DECLARING AS SURPLUS AND APPROVING A CONTRACT TO
SELL 28.541 ACRES OF CITY-OWNED PROPERTY IN
RESEARCH PARK**

WHEREAS, the City seeks to preserve jobs, increase employment opportunities, and to encourage establishment of new jobs within the corporate boundaries of the City, in order to improve the economic welfare of the City and its citizens, in furtherance of the public purposes enunciated in Article VIII, Section 13 of the Ohio Constitution; and

WHEREAS, Industrial Commercial Properties has offered to purchase 28.541 acres, more or less, of City-owned property located on Research Boulevard (north of Research Boulevard and south of Spaulding Road) for development which will in turn preserve and/or create positive employment and economic activity in the City;

NOW THEREFORE, Be It Resolved by the Council of the City of Kettering, State of Ohio, that:

Section 1. Council hereby ratifies and approves the Contract Of Purchase And Sale attached hereto as Exhibit 1. The City Manager is hereby authorized to enter into that contract on behalf of the City of Kettering and to dispose of the real estate described therein, and to take any and all additional action necessary and proper to do so. The City Manager is further authorized to sign any amendments or extensions thereto and any other related agreements and instruments that the City Manager deems appropriate.

Section 2. The real property described in Exhibit 1 is hereby declared as surplus property and no longer required for municipal purposes effective as of the date of closing.

Section 3. As provided in Section 4-8 of the City Charter, this Resolution takes effect immediately upon its adoption.

Passed by Council this _____ day of _____ 2020.

DONALD E. PATTERSON, Mayor

ATTEST:

CERTIFICATE OF APPROVAL

LASHAUNAH D. KACZYNSKI
Clerk of Council

THEODORE A. HAMER III,
Law Director

(Requested by: City Manager's Office)

CONTRACT OF PURCHASE AND SALE

This CONTRACT OF PURCHASE AND SALE (this "Contract") is made and entered into as of _____, 2020, by INDUSTRIAL COMMERCIAL PROPERTIES LLC, an Ohio limited liability company, with an address of 6675 Parkland Blvd., Suite 100, Solon, Ohio 44139, Attn: Christopher Semarjian ("Buyer") and CITY OF KETTERING, OHIO, an Ohio municipal corporation, with an address of 3600 Shroyer Road, Kettering, Ohio 45429, Attn: Gregg Gorsuch ("Seller").

RECITALS:

A. Seller is the owner in fee simple of certain real property located on Research Boulevard, Montgomery County, Ohio, identified as Parcel ID Number N64 03501 0048 and as more particularly described on Exhibit A attached hereto as a part hereof (collectively, the "Property").

B. Seller desires to sell the Property to Buyer, and Buyer desires to buy the Property from Seller, pursuant to the terms and conditions in this Contract.

NOW, THEREFORE, in consideration of the mutual benefits and covenants contained herein, and other good and valuable consideration, receipt and sufficiency of which are acknowledged, Seller and Buyer agree as follows:

TERMS AND CONDITIONS

1. Purchase and Sale. Seller agrees to sell, convey and transfer the Property to Buyer, and Buyer agrees to purchase the Property from Seller, on the terms and conditions set forth below.

2. Terms of Sale.

(a) Purchase Price. The purchase price for the Property is Two Hundred Eighty-Five Thousand Four Hundred Ten and 00/100 DOLLARS (\$285,410.00) (the "Purchase Price") and shall be paid by Buyer to Seller on the Closing Date (as hereinafter defined) by wire transfer of immediately available federal funds to such account as Seller may designate.

(b) Deposit. Within five (5) days after the full execution and delivery of this Contract by both parties (the "Effective Date"), Buyer shall deposit with NorthStar Title Services, LLC, 20445 Emerald Parkway, Suite 200, Cleveland, Ohio 44135 ("Title Company" or "Escrow Agent") the amount of One Thousand and 00/100 DOLLARS (\$1,000.00) (the "Deposit"). The Deposit shall be credited to Buyer against the Purchase Price at the closing or otherwise retained by Seller or refunded to Buyer in accordance with the terms of this Contract.

3. Closing; Closing Adjustments and Costs; Closing Documents.

(a) Closing Date. The closing of the purchase contemplated herein shall be on a date (the "Closing Date") selected by Buyer that is no later than thirty (30) days after the

expiration of the Due Diligence Period (as defined below). The Closing shall take place in escrow at the offices of Escrow Agent or at such other time and place as may be mutually agreed to by Buyer and Seller.

(b) Closing Costs. Seller shall pay the cost of all transfer taxes. Buyer shall be solely responsible for the payment of all title examination fees and title insurance premiums necessary to provide Buyer with an owner's policy of title insurance if Buyer desires to purchase one. Buyer and Seller shall each be responsible for the payment of their own attorneys' fees and expenses. All other closing costs shall be paid by Buyer.

(c) Deed. On the Closing Date, Seller shall convey to Buyer fee simple title to the Property by recordable limited warranty deed (the "Deed"), free and clear of all liens and encumbrances by any party claiming by, through or under Seller, except (i) liens for real property taxes and assessments due and payable in the year of closing and thereafter and any CAUV recoupment as otherwise provided in this Contract, (ii) easements and restrictions of record, (iii) existing encroachments and impediments, (iv) coal, oil, gas, and other mineral rights and interests previously transferred or reserved of record; and (v) governmental laws, restrictions, and ordinances affecting the Property. Exclusive possession of the Property shall be delivered to Buyer on the Closing Date.

(d) Other Closing Documents By Seller. On the Closing Date, in addition to the Deed, Seller shall deliver to Buyer a closing statement reflecting the Purchase Price and prorations and apportionment required herein (the "Closing Statement"); and (ii) such other documents as may be reasonably necessary or appropriate to close the purchase and sale of the Property. All such documents shall be in form and content reasonably acceptable to both Buyer and Seller.

(e) Closing Deliveries By Buyer. On the Closing Date, in addition to the Purchase Price, Buyer shall deliver to Seller a Closing Statement and any other documents that may be reasonably necessary or appropriate to close the purchase and sale of the Property. All such documents shall be in form and content reasonably acceptable to both Buyer and Seller.

(f) Tax Prorations. All real property ad valorem taxes and assessments on the Property shall be prorated as of the Closing Date, in accordance with the Montgomery County Short Form Method. However, Buyer shall be solely responsible for agricultural use tax recapture which shall be paid by Buyer as the same becomes due and payable. Buyer's obligations under this Section 3(f) shall survive the closing and delivery of the Deed.

4. Tests, Engineering Studies and Inspections. Within fifteen (15) working days from the date of this Contract, Seller shall provide, or make available, to Buyer for review in connection with Buyer's due diligence, all information, materials and documents in connection with the Property in Seller's possession, including without limitation, title, surveys, and environmental reports (collectively "Property Information"). Buyer and any agent or representative of Buyer shall have the right, at any time during regular business hours, after the date of this Contract and at the sole risk to and cost of Buyer, to enter the Property, after reasonable advance notice to Seller, for the sole purposes of making environmental studies of the

Property and inspecting the physical condition of the real property and any improvements, including making any surveys or soil tests. Buyer shall indemnify and hold Seller harmless from any and all claims and expenses (including, without limitation, attorneys' fees) arising out of such inspection, testing or other activities of Buyer, its agents and representatives, on, at, or related to the Property. Buyer shall repair any damage to the Property resulting from the studies or inspections referred to herein. The obligations of Buyer under this Section 4 shall survive the termination of this Contract.

5. Due Diligence Period. Buyer shall have three hundred sixty-five (365) days from the Effective Date (the "Due Diligence Period") in order to perform its due diligence investigation of the Property, including, without limitation, conducting a physical inspection of the Property (which inspections may include, but shall not be limited to, soils, wetlands, engineering, structural and mechanical studies), confirming that Seller has good and marketable fee simple to the Property subject to no exceptions other than those that are acceptable to Buyer, conducting an environmental assessment of the Property, confirming the status of zoning and the availability of all utilities, having the Property surveyed, certificates of occupancy and other matters deemed appropriate by Buyer and otherwise confirming that the Property is suitable and feasible for Buyer's intended use in Buyer's sole discretion. If Buyer determines prior to the expiration of the Due Diligence Period in Buyer's sole discretion that it is not in Buyer's best interest to purchase the Property for any reason, Buyer may terminate this Contract by giving written notice of termination to Seller on or before 5:00 p.m. of the last day of the Due Diligence Period. If Buyer fails to give such notice, this Contract shall remain in full force and effect, and the Deposit shall be nonrefundable except as provided in Sections 11 and 12 of this Contract. If Buyer terminates the Contract in accordance with the foregoing, the Deposit shall be returned to Buyer, and the obligations of the parties to this Contract shall terminate, except for the Buyer indemnifications set forth herein.

6. Title Objections. If Buyer so notifies Seller of any title defects or exceptions within the Due Diligence Period, Seller shall have ten (10) working days from Seller's receipt of such notice in which to either (A) cure such title defects or exceptions or commit to cure them on or before the Closing Date, or (B) notify Buyer in writing that it is unable or unwilling to cure such title defects or exceptions in which case Buyer shall have ten (10) days from its receipt of such notice in which to elect in writing to, (1) accept such title as Seller is able to convey, or (2) terminate this Contract whereupon the Deposit in its entirety shall be returned to Buyer and thereafter neither party will have any further obligations hereunder except for the Buyer indemnifications set forth herein.

7. Representations and Warranties of Seller. Seller represents and warrants to Buyer as follows, which representations and warranties shall be remade as of the Closing Date:

(a) Seller possesses full right, power and authority to execute, deliver and perform this Contract.

(b) The execution and delivery of this Contract, the consummation of the transaction provided for herein and the fulfillment of the terms hereof, will not result in a breach

EXHIBIT 1

of any term, covenant or condition or constitute a default under, any agreement or instrument to which Seller is a party.

(c) Seller shall maintain the Property in its present condition (ordinary wear and tear excepted) through the Closing Date.

(d) On the Closing Date, there will be no leases, options, purchase agreements, tenancies, land contracts or other such agreements affecting the Property or any part thereof, other than this Contract.

(e) To Seller's knowledge, the Property Information delivered or made available to Buyer is true, correct and complete.

(f) Seller has not received notice of any kind from any "Governmental Authority" alleging that Seller has failed to comply with any applicable law, ordinance, regulation, statute, rule or restriction pertaining to or affecting the Property, including, without limitation, all Environmental Laws (defined below); and Seller does not have knowledge of any such noncompliance. As used herein, the term "Governmental Authority" shall mean and include every department, agency, commission, board, bureau or instrumentality of the United States, the State of Ohio, the County of Montgomery, or the City of Kettering having jurisdiction over the Property, including, without limitation, the United States Environmental Protection Agency and the Ohio Environmental Protection Agency. Seller will promptly notify Buyer if Seller receives notice, between the date of this Agreement and the Closing Date, of any such noncompliance.

(g) Seller has received no notice of any default or breach by Seller of any covenants, conditions, restrictions, rights-of-way, or easements which may affect the Property or any portion of the Property, and no such default or breach now exists.

(h) Seller has not received any notice of any condemnation proceeding or other proceedings in the nature of eminent domain in connection with the Property.

(i) To Seller's knowledge and except as may be disclosed in any environmental reports delivered to Buyer (i) no Hazardous Materials (defined below) have been stored at, disposed of or are located in, on or about the Property by Seller; (ii) no Hazardous Materials have been buried or accumulated in, on or about the Property by Seller; and (iii) no permit related to Hazardous Materials is required from the Ohio or Federal Environmental Protection Agency for the use or maintenance of any existing improvement or facility on the Property due to its current condition.

For purposes of this Contract, the following terms shall have the following meanings:

"**Environmental Laws**" shall mean all present and future federal, state and local laws, regulations and ordinances and principles of common law relating to the protection of the environment, public health or public safety including, but not limited to, the Comprehensive Environmental Response, Compensation and Liability Act, (42 U.S.C. § 9601, et seq., as amended), the Hazardous Materials Transportation Act (49 U.S.C. § 1801, et seq., as amended),

the Resource Conservation and Recovery Act (42 U.S.C. § 6901, et seq., as amended), the Clean Water Act (33 U.S.C. § 7401, et seq. as amended), the Safe Drinking Water Act (42 U.S.C. § 300f, et seq., as amended) the Toxic Substances Control Act (15 U.S.C. § 2601, et seq. as amended) and any state and local counterparts of such statutes or regulations.

“Hazardous Materials” shall mean all those things defined as “hazardous substances,” “hazardous materials,” “hazardous wastes,” “pollutants,” “contaminants,” “toxic substances” or other similar terms in any of the Environmental Laws.

Except as expressly set forth in this Contract, it is understood and agreed that Seller is not making and has not at any time made any warranties or representations of any kind or character, expressed or implied, with respect to the Property, including, but not limited to, any warranties or representations as to the habitability, merchantability, fitness for a particular purpose, zoning, tax consequences, physical defects or condition, environmental condition, utilities, leases, governmental approvals or compliance with applicable laws, rules and regulations, or any other matter regarding the Property. Buyer acknowledges and agrees that upon closing Seller shall sell and convey the Property to Buyer and Buyer shall accept the Property “AS IS, WHERE IS, AND WITH ALL FAULTS”, except to the extent expressly provided otherwise in this Contract. Buyer has not relied and will not rely on, and Seller is not liable for or bound by, any expressed or implied warranties, guaranties, statements, representations or information pertaining to the Property or relating thereto made or furnished by Seller or any agent representing or purporting to represent Seller, unless specifically set forth in this Contract. Buyer represents to Seller that Buyer has conducted or will conduct prior to closing such inspections and investigations of the Property as Buyer deems necessary and appropriate to satisfy itself as to the condition of the Property, and will rely solely upon the same and not upon any information provided by or on behalf of Seller or its agents, other than the warranties and representations of Seller expressly set forth in this Contract. Upon closing, Buyer shall assume the risk that adverse matters may not have been revealed by Buyer’s investigations, and Buyer, upon closing, shall be deemed to have waived, relinquished and released Seller (and Seller’s affiliates, parent, officers, directors, shareholders, employees and agents) from and against any and all claims, demands, causes of action, losses, damages, liabilities, costs and expenses (including, without limitation, attorneys’ fees) that Buyer might have asserted or alleged against Seller at any time by reason of any and all circumstances, events or matters regarding the Property except for any representations or warranties expressly set forth in this Contract.

8. Representations and Warranties of Buyer. Buyer represents and warrants to Seller that:

(a) Buyer possesses full right, power and authority to execute, deliver and perform this Contract.

(b) No consent, approval or other action of, of filing or registration with, any governmental agency, commission or office is required on Buyer’s behalf with respect to the transaction contemplated herein.

(c) The execution and delivery of this Contract, the consummation of the transaction provided for herein, and the fulfillment of the terms hereof, will not result in a breach

of any term, covenant or condition of, or constitute a default under, any agreement or instrument to which Buyer is a party.

9. Covenants of Seller.

(a) During the period from the date of this Contract until the Closing Date Seller shall not enter into any contracts, leases, easements or other agreements that will affect the maintenance, use, management, leasing or operation of the Property after the Closing Date, without obtaining Buyer's prior consent and Seller shall provide a copy of any such items to Buyer.

(b) From and after the expiration of the Due Diligence Period, Seller shall not alter or construct any improvements to the Property.

10. Risk of Loss. All risk of loss with respect to the Property will remain with Seller until the closing and delivery of the Deed to Buyer.

11. Damage and Condemnation. If at any time prior to the Closing Date, all or any part of the Property is damaged by casualty or taken or appropriated by virtue of eminent domain or similar proceedings, or is condemned for any public or quasi-public use, then Buyer may terminate this Contract and thereafter neither party will have any further obligations hereunder except for the Buyer indemnifications set forth herein. If Buyer terminates this Contract, then Seller shall be entitled to receive all insurance proceeds or condemnation proceeds payable for the affected portion of the Property. If Buyer elects to maintain this Contract in full force and effect, then (i) Buyer shall be entitled to receive all insurance proceeds or condemnation proceeds payable for that portion of the Property damaged or taken, and Seller shall execute such assignments or other instruments as are necessary to transfer such proceeds to Buyer, and (ii) if all or any portion of the insurance or condemnation proceeds have been paid to Seller, then Buyer shall receive a credit against the Purchase Price equal to the amount of the insurance or condemnation proceeds actually paid to Seller with any remaining proceeds to be transferred to Buyer.

12. Default. If, following the full execution of this Contract, Buyer defaults in the performance of its duties or obligations under this Contract, Seller shall be entitled, as its sole and exclusive remedy hereunder to terminate this Contract (except to the extent that any right, obligation or liability set forth herein expressly survives termination of this Contract) by written notice to Buyer of such termination and to retain the Deposit as full liquidated damages for such default of Buyer, the parties hereto acknowledging the difficulty of ascertaining the actual damages in the event of such a default, that it is impossible more precisely to estimate the damages to be suffered by Seller upon Buyer's default, that such Deposit is intended not as a penalty, but as full liquidated damages and that such amount constitutes a reasonable good faith estimate of the potential damages arising therefrom. In the event of a material breach or default by Seller of this Contract, Buyer shall be entitled to the return of the Deposit and shall have the right to enforce this Contract against Seller pursuant to an action of specific performance.

13. Notice. Any notice or consent authorized or required by this Contract shall be in writing and (i) delivered personally, (ii) sent postage prepaid by certified mail or registered mail,

return receipt requested, (iii) sent by a nationally recognized overnight carrier that guarantees next day delivery, directed to the other party at the address set forth in the caption of this Contract or such other parties or addresses as may be designated by either Buyer or Seller by notice given from time to time in accordance with this Paragraph. Notice may also be given at an by electronic transmission to Buyer at chris@icpllc.com, with a copy to Edward A. Hurtuk at ehurtuk@walterhav.com or to Seller at Gregg.Gorsuch@ketteringoh.org with a copy to Theodore A. Hamer III, Law Director at Theodore.Hamer@ketteringoh.org and such notice shall be effective upon transmission provided that a copy of such notice is sent concurrently by one of the methods provided in (i)-(iii) above. Any notice shall be effective, in the case of hand delivery, when delivered; if given by mail, upon such notice being deposited with the United States Postal Service with first-class postage prepaid, return receipt requested; if given by electronic transmission, when sent to the applicable party's email address given above if the party sending such notice receives confirmation of delivery thereof from its email address; and if given by any other means, including by overnight courier, when actually received.

14. Brokers. Buyer warrants and represents that it neither engaged nor dealt with any real estate agent or broker in connection with the transaction contemplated by this Contract. Seller warrants and represents that it engaged and will pay a commission to Mark Fornes Realty, and no other broker, in connection with the transaction and Buyer shall not have any obligation with respect to such commission.

15. Counterparts. This Contract may be executed in any number of counterparts, each of which shall be an original, but all of which together shall constitute one and the same instrument.

16. Time of the Essence. Time shall be of the essence of this Contract.

17. Tax Free Exchange. Seller and Buyer each may desire to have this transaction qualify as a tax-deferred exchange (including a reverse exchange) under Section 1031 of the Internal Revenue Code of 1986. At the request of either party, the other party shall assist the requesting party in qualifying the transaction contemplated herein as an exchange pursuant to Section 1031 of the Internal Revenue Code of 1986. Such party may assign its interest in this Contract to effectuate an exchange, and in such event, such party shall promptly notify the other party. No such assignment shall affect in any way the obligations of Seller and Buyer under this Contract. The non-requesting party shall not be required to incur any liabilities in connection with such exchange nor shall it be required to take title to any other property in connection with such exchange. The requesting party shall pay any additional transfer taxes, recording fees and similar closing costs incurred by the other party resulting from such exchange.

18. Miscellaneous. This Contract shall be binding upon, and shall inure to the benefit of, the parties hereto, their respective heirs, legal representatives, successors and assigns. Buyer shall have the right to assign this Contract or to designate a nominee to take title to the Property. If Buyer or Seller is composed of more than one party or individual, all obligations of such parties or individuals shall be joint and several. This Contract shall be governed by and construed in accordance with the laws of the State of Ohio. This Contract contains the entire agreement between the parties hereto with respect to the matters to which it pertains, may be amended only

by written agreement signed by both Buyer and Seller and supersedes any prior mailings. This Contract was drafted by Seller for convenience purposes only and shall not be construed for or against either party on such basis. If any term, covenant or condition contained in this Contract is deemed to be invalid, illegal or unenforceable, then the rights and obligation of the parties hereto shall be construed and enforced with that term, covenant or condition limited so as to make it valid, legal or enforceable to the greatest extent allowed by law, or, if it is totally invalid, illegal or unenforceable, then, as if this Contract did not contain that particular term, covenant or condition.

19. Days. If any action is required to be performed, or if any notice, consent or other communication is given, on a day that is a Saturday or Sunday or a legal federal holiday, such performance shall be deemed to be required, and such notice, consent or other communication shall be deemed to be given, on the first (1st) business day following such Saturday, Sunday or legal holiday.

20. City Council Approval. This Contract shall be deemed void ab initio if, prior to 60 days from the date of execution by both parties, the Kettering City Council does not approve, by resolution, this Contract and declare that the Property is surplus property. In the event the Kettering City Council does approve this transaction, then notwithstanding anything contained herein to the contrary the Effective Date of this Contract shall be the date that the Kettering City Council approves this Contract.

IN WITNESS WHEREOF, Seller and Buyer have executed this Contract as of the date first set forth above.

BUYER:

INDUSTRIAL COMMERCIAL PROPERTIES LLC

By: _____

Title: _____

Date: _____

SELLER:

CITY OF KETTERING, OHIO

By: _____

Title: _____

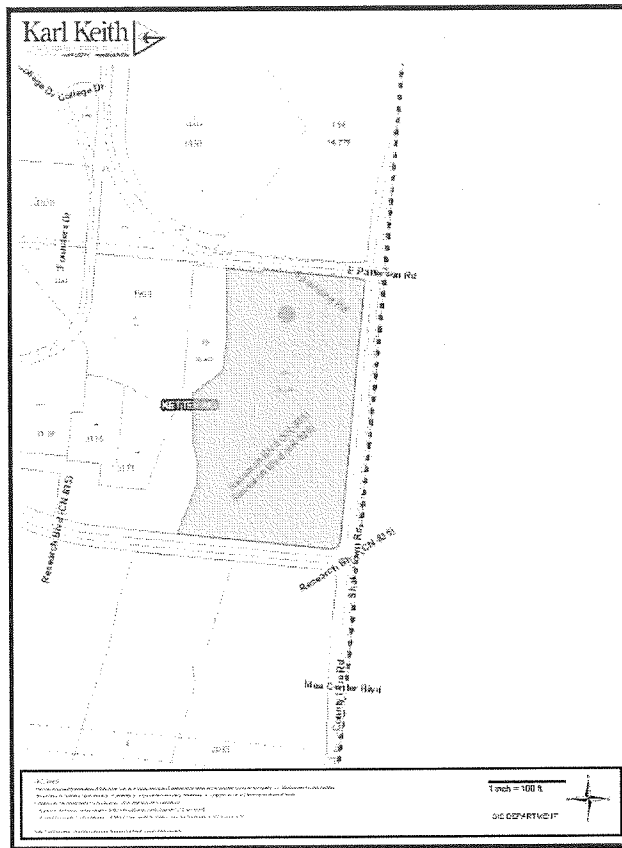
Date: _____

EXHIBIT 1

EXHIBIT A

(The Property)

See attached



CITY OF KETTERING, OHIO

A RESOLUTION

By:

No.

**AUTHORIZING THE CITY MANAGER TO CONTRACT
WITH THE MONTGOMERY COUNTY LAND
REUTILIZATION CORPORATION FOR PARTICIPATION
IN THE DEMOLITION PROGRAM**

WHEREAS, the Montgomery County Land Reutilization Corporation ("The Land Bank") will be funding the removal and greening of vacant and blighted properties in Montgomery County ("Demolition Program"); and

WHEREAS, the City of Kettering is eligible to participate in the Demolition Program and has been allocated \$89,875.00 in funding for residential and commercial demolition; and

WHEREAS, the Demolition Program requires a 1:1 matching contribution;

NOW, THEREFORE, Be It Resolved by the Council of the City of Kettering, Ohio that:

Section 1. The City Manager is hereby authorized, on behalf of the City of Kettering, to enter into one or more agreements with The Land Bank for the City's participation in the Demolition Program. The City Manager is further authorized to sign any amendments or extensions thereto that the City Manager deems appropriate.

Section 2. As provided in Section 4-8 of the City Charter, this Resolution takes effect immediately upon its adoption.

Passed by Council this _____ day of _____ 2020.

DONALD E. PATTERSON, Mayor

ATTEST:

CERTIFICATE OF APPROVAL

LASHAUNAH D. KACZYNSKI,
Clerk of Council

THEODORE A. HAMER III,
Law Director

(Requested by: Planning and Development Department)

CITY OF KETTERING, OHIO

A RESOLUTION

By:

No.

**AUTHORIZING THE CITY MANAGER TO CONTRACT
WITH THE MONTGOMERY COUNTY LAND
REUTILIZATION CORPORATION TO PROVIDE
ADMINISTRATIVE SUPPORT SERVICES FOR THE
DEMOLITION PROGRAM**

WHEREAS, the Montgomery County Land Reutilization Corporation ("The Land Bank") will be funding the removal and greening of vacant and blighted properties in Montgomery County ("Demolition Program"); and

WHEREAS, The Land Bank desires for the City to provide administrative services in support of the Demolition Program;

NOW, THEREFORE, Be It Resolved by the Council of the City of Kettering, Ohio that:

Section 1. The City Manager is hereby authorized, on behalf of the City of Kettering, to enter into one or more agreements with The Land Bank for the City to provide The Land Bank with administrative services in support of the Demolition Program. The City Manager is further authorized to sign any amendments or extensions thereto that the City Manager deems appropriate.

Section 2. As provided in Section 4-8 of the City Charter, this Resolution takes effect immediately upon its adoption.

Passed by Council this _____ day of _____ 2020.

DONALD E. PATTERSON, Mayor

ATTEST:

CERTIFICATE OF APPROVAL

LASHAUNAH D. KACZYNSKI,
Clerk of Council

THEODORE A. HAMER III,
Law Director

(Requested by: Planning and Development Department)

CITY OF KETTERING, OHIO

AN ORDINANCE

By:

No.

**TO REZONE AND TO RECLASSIFY THE DEVELOPMENT
PATTERN DISTRICTS FOR 3233 AND 3383 WOODMAN
DRIVE (PLANNING COMMISSION CASE NO. PC-20-010)**

WHEREAS, on July 20, 2020, after publication and issuance of notice as required by the zoning regulations of this City, a public hearing was conducted by the City of Kettering Planning Commission concerning an application to rezone and to reclassify the development pattern districts for two parcels of land: (1) 3233 Woodman Drive (Lot 2 of the AT&T Woodman Plat; Auditor's Parcel No. N64 03405 0344); and (2) 3383 Woodman Drive (Lot 1 of the AT&T Woodman Plat; Auditor's Parcel No. N64 03405 0343); and

WHEREAS, the Planning Commission recommended approval of the proposed zoning changes and pattern district reclassifications; and

WHEREAS, on August 11, 2020, after publication and issuance of notice as required by the zoning regulations of this City, this City Council held a public hearing with evidence presented by the Planning and Development Department along with the recommendation of the Planning Commission to approve the application, and all parties were afforded the opportunity to be heard and present evidence in support of their positions; and

NOW, THEREFORE, Be It Ordained by the Council of the City of Kettering, Ohio, that:

Section 1. Having considered the staff report(s) and recommendation of the Planning Commission, the criteria set forth in Sections 1153.12.9, Consistency, through 1153.12.15, Other Factors, of Chapter 1153 of the Zoning Code, the testimony and evidence presented at the public hearing, sound planning and zoning practices, the City's adopted plans, goals, and policies, the intent of the Kettering Zoning Code, and the public health, safety and welfare requirements underlying the Zoning Code, City Council finds that the application for rezoning and reclassification of development pattern districts should be approved.

Section 2. Based on the foregoing, 3233 Woodman Drive is rezoned so that all of said lot is zoned O-Office District; and 3383 Woodman Drive is rezoned so that all of said lot is zoned I-Industrial District. Furthermore, 3233 Woodman Drive is reclassified so that all of said lot is classified as S-Suburban Development Pattern District; and 3383 Woodman Drive is reclassified so that all of said lot is classified as SB-Suburban Business Development Pattern District.

Section 3. As appropriate and necessary, the official Zoning Map of the City of Kettering, Ohio is hereby revised and amended to reflect the zone change(s) referred to in Section 2 above; and Section 1133.02 of the Kettering Codified Ordinances, which adopts the Zoning Map by reference, is hereby reenacted effective as of the first effective date of this Ordinance so as to include the map revision in the Zoning Code. The Director of the Planning and Development Department is directed to make such appropriate revisions on the official Zoning Map of the City.

Section 4. As appropriate and necessary, the Official Development Pattern Map of the City of Kettering, Ohio is hereby revised and amended to reflect the Development Pattern District reclassification(s) referred to in Section 2 above; and Section 1133.03 of the Kettering Codified Ordinances, which adopts the Official Development Pattern Map by reference, is hereby reenacted effective as of the first effective date of this Ordinance so as to include the map revision in the Zoning Code. The Director of the Planning and Development Department is directed to make such appropriate revisions on the Official Development Pattern Map of the City.

Section 5. As provided in Section 4-8 of the City Charter, this Ordinance shall be effective two weeks after adoption.

Passed by Council this _____ day of _____ 2020.

DONALD E. PATTERSON, Mayor

ATTEST:

CERTIFICATE OF APPROVAL

LASHAUNAH D. KACZYNSKI,
Clerk of Council

THEODORE A. HAMER III,
Law Director

(Requested by: Planning and Development Department)